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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/447,023	11/22/1999	MARTIN F. BERRY	00414-046001	3274

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JOHN J GAGEL
FISH & RICHARDSON PC
225 FRANKLIN STREET
BOSTON, MA 021102804

EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	25

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/447,023	Applicant(s) BERRY ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 October 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *70,85,86,88-97 and 99-109* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *70, 85, 86, 88-97, 99-109* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 70, 85, 86, 88-97, 99-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiriboga et al. (Journal of Food Science, p. 464-467) in view of Liebretch et al. (6,106,874).

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. The claims have been amended to require that the juice component be from cranberries, which has a particular anthocyanin content and is the sole component from cranberries in the blend. However, Chiriboga et al. disclose a cranberry juice cocktail component which has 5% light juice (Table 1). Nothing is seen in the specification that excludes the use of other juices, or pigments as in Chiriboga et al. The specification discloses various blends and juice from cranberries, but does not say that other materials such as pigments cannot be added (page 3, lines 35-38, page 4, lines 1-3, page 7, lines 1-28). On page 12, lines 1-10, of the specification, formula A is cited as using only light color cranberry juice as the sole source of acid only. However, it is seen that it would have been within the skill of the ordinary worker to use only one color of juice, if only one color was required or a blend as in Chiriboga et al. who uses a pale juice and other colored juices. Also, the suggestion to use only one

color is pale juice is disclosed by Liebrecht et al. who discloses that light color juices are known in general such as pear juice, apple juice and white grape juice which are inexpensive, clear, colorless and have a mild flavor. (col. 5, lines 55-65). Even though the date of the reference is later than the filing date of the instant application, the reference can be used to show universal facts (In re Wilson, 311 F.2d 266, 135 USPQ 442 (CCPA 1962). Such facts include the characteristics and properties of a material or a scientific truism. See MPEP 2124. It would have been within the skill of the ordinary worker to choose particular juices based on their color (i. e. amount of anthocyanins present in this case) particularly as Chiriboga et al. disclose that various light juices are known with particular amounts of anthocyanin in them (Table 1).

Therefore, it would have been obvious to make a colorless juice as disclosed by Libretto et al. in the beverage of Chiriboga et al. for its known function of adding particular flavors and taste because Chiriboga et al. disclose various degrees of pigment in a juice, and Libretto et al. disclose a colorless juice which would also allow for a color at within the claimed range of anthocyanin.

ARGUMENTS

Applicant's arguments filed 10-15-02 have been fully considered but they are not persuasive. Applicants argue that the cranberry juice component is the sole component from cranberries in the blend and that Chiriboga et al. disclose a cranberry juice cocktail (CJC) which is a blend of juices. Now various colors have been disclosed from clear to a particular amount of light juice in a beverage. Certainly, the use of almost clear juices is known as in ~~Libretto~~ et al. above.

Applicants argue as to the Declaration by Mantius that Table 1 of Chiriboga discloses the anthocyanin content of CJC's, and not a juice component and that it cannot be reliably be calculated just what the anthocyanin of the light press juice, and that the articles exemplifies a convention approach to blending juices and does not show the use of a low color juice component as the sole cranberry component in a blended juice. However, the reference does disclose that it is known to use up to 60% of light color juices in a beverage (Table 1) and now Liebrecht et al. gives the suggestion that a clear fruit juices are known.

INFORMATION DISCLOSURE FORM

The Examiner does not see the latest IDS form and would appreciate it if another were sent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718. The Examiner's fax number is 708-872-9706.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

hfp 10-24-02

HELEN PRATT
PRIMARY EXAMINER